SINGLE BENCH

IN THE HIGH COURT OF JUDICATURE AT BILASPUR
CHHATTISGARH

WRIT PETITION NO. 420 /2006

PETITIONER (S) : Executive Engineer,
Public Works Department (B&R),
Jashpur Division,
District: Jashpur (CG)

P.R. No. 4149/06
Presented by Sri [illegible] (SK Barik)
dated 2/3/06

VERSUS

RESPONDENT (S) : Akhilesh Kumar Vaishnav
Aged about 40 years,
S/o Tarachand Vaishnav,
Resident & Post: Kansabel,
District: Jashpur (CG)

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION NO.2900 OF 1996

The State of Madhya Pradesh (now Chhattisgarh) and another

versus

Chhattisgarh Jalasaya Pariyojna Shramik Sangh, Rudri (Dhamtari), Raipur

And other connected matters.

ORDER

Sd/-
Satish K. Agnihotri
Judge

19-2-2007

(57)

HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION NO.2900 OF 1996

Petitioners	:	The State of Madhya Pradesh (now Chhattisgarh) and another
	versus	
Respondent	:	Chhattisgarh Jalasaya Pariyojna Shramik Sangh, Rudri (Dhamtari), Raipur

WRIT PETITION NO.669 OF 2001

Petitioner	:	State of Chhattisgarh
	versus	
Respondents	:	Brijmohan and others

WRIT PETITION NO.775 OF 2002

Petitioners	:	State of Chhattisgarh and others
	versus	
Respondents	:	The Labour Court/Officer and others

WRIT PETITION NO.4120 OF 2006

Petitioner	:	Executive Engineer, Public Works Department (B&R), Jashpur Division, Jashpur
	versus	
Respondent	:	Akhilesh Kumar Vaishnav

Present : Mr. V.V.S.Moorthy, Deputy Advocate General with Mr. Arvind Dubey, Panel Lawyer for the petitioners/State.
Mr. H.B.Agrawal, Senior Advocate with Mr. Pankaj Agrawal, counsel, Mr. T.K.Tiwari, Mr. P.S.Koshy and Mr. S.P.Kale, counsel for the respondents.
Mr. Rajeev Shrivastava, Advocate appears as Amicus Curiae.

ORDER

(Passed on 20th Day of February, 2007)

In the facts of the present writ petitions, the following common question arises for consideration as under :-

> "Whether the provisions contained in Section 17B of the Industrial Disputes Act, 1947 (henceforth 'the Act, 1947') is mandatory even in the case where award granting reinstatement has been stayed by the High Court?"

2. For proper understanding of the issue, it is necessary to quote the provisions of Section 17B of the Act, 1947. Section 17B of the Act, 1947 reads as under :-

> "**17B. Payment of full wages to workman pending proceedings in higher courts.** – Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency

of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court :

Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period or part, as the case may be."

The provisions of the section under consideration was inserted by Act 46 of 1982, sec. 11 (w.e.f. 21-8-1984).

3. The Hon'ble Supreme Court, while considering the provisions of Section 17B of the Act, 1947 in the matter of ***Bharat Singh vs. Manegement of New Delhi Tuberculosis Centre, New Delhi and others***[1], observed as under :-

"9. The Objects and Reasons for enacting the Section is as follows :

"When Labour Courts pass awards of reinstatement, these are often contested by an employer in the Supreme Court and High Courts. It was felt that the delay in the implementation of the award causes hardship to the workman

concerned. It was, therefore, proposed to provide the payment of wages last drawn by the workman concerned, under certain conditions, from the date of the award till the case is finally decided in the Supreme Court or High Courts."

"10. The Objects and Reasons give an insight into the background why this Section was introduced. Though Objects and Reasons cannot be the ultimate guide in interpretation of statutes, it often times aids in finding out what really persuaded the legislature to enact a particular provision. The Objects and Reasons here clearly spell out that delay in the implementation of the awards is due to the contests by the employer which consequently cause hardship to the workmen. If this is the object, then would it be in keeping with this object and consistent with the progressive social philosophy of our laws to deny to the workmen the benefits of this Section simply because the award was passed, for example just a day before the Section came into force. In our view it would be not only defeating the rights of the workman but going against the spirit of the enactment. A rigid interpretation of this Section as is attempted by the learned counsel for the respondents would be rendering the workman worse off after the coming into force of this Section. This section has in effect only codified the rights of the workmen to get their wages which they could not get in time because of the long drawn out process caused by the methods employed by the Management. This Section, in other words, gives a mandate to the Courts to award wages if the conditions in the Section are satisfied."

4. The Bombay High Court, in ***Elpro International Limited*** **vs.** ***K.B.Joshi and others***[2], held that Section 17B of the Act, 1947 operates within a limited sphere. Its operation is subject to the conditions laid down by the section itself. Section nowhere lays down that in extreme cases where it is demonstrated that the award passed is either without jurisdiction or is otherwise a nullity or grossly erroneous or perverse, the High Court or the Supreme Court is debarred from exercising its powers under Articles 226 and 136 of the Constitution. Thus, it was held that the High Court, in exercise of its power under Article 226 of the Constitution of India, can stay the operation of Section 17B of the Act, 1947.

5. The Hon'ble Supreme Court, in the case of ***Dena Bank*** **vs.** ***Kirtikumar T. Patel***[3], while considering the ambit and scope of Section 17B of the Act, 1947, held as under :-

> "22. As regards the powers of the High Court and the Supreme Court under Articles 226 and 136 of the Constitution it may be stated that Section 17-B, by conferring a right on the workman to be paid the amount of full wages last drawn by him during the pendency of the proceedings involving challenge to the award of the Labour Court, Industrial Tribunal or National Tribunal in the High Court or the Supreme Court which amount is not refundable or recoverable in the event of the award being set aside, does not in any way preclude the High Court or the Supreme Court to pass a order directing payment of a higher amount to the workman if such higher amount is considered necessary in the interest of

justice. Such a direction would be dehors the provisions contained in Section 17-B and while giving the direction the Court may also give directions regarding refund or recovery of the excess amount in the event of the award being set aside. But we are unable to agree with the view of the Bombay High Court in Elpro International Ltd. (1987 Lab IC 1468) (supra) that in exercise of the power under Articles 226 and 136 of the Constitution an order can be passed denying the workman the benefit granted under Section 17-B. The conferment of such a right under Section 17-B cannot be regarded as a restriction on the powers of the High Court or the Supreme Court under Articles 226 and 136 of the Constitution."

6. The Hon'ble Supreme Court, in the matter of ***Dena Bank*** vs. ***Kirtikumar T. Patel*** (supra), expressed its disapproval of the view taken by the Bombay High Court in the matter of ***Elpro International Limited*** vs. ***K.B.Joshi and others*** (supra) that in exercise of power under Articles 226 and 136 of the Constitution of India, an order can be passed denying the benefit granted under Section 17B of the Act, 1947 to the workman. The Hon'ble Supreme Court, in ***Dena Bank*** vs. ***Kirtikumar T. Patel*** (supra), further held in para 20 as under :-

"20. As indicated earlier Section 17-B has been enacted by Parliament with a view to give relief to a workman who has been ordered to be reinstated under the award of a Labour Court or the Industrial Tribunal during the pendency of proceedings in which the said award is under challenge before

(8)

the High Court or the Supreme Court. The object underlying the provision is to relieve to a certain extent the hardship that is caused to the workman due to delay in the implementation of the award. The payment which is required to be made by the employer to the workman is in the nature of subsistence allowance which would not be refundable or recoverable from the workman even if the award is set aside by the High Court or this Court. Since the payment is of such a character Parliament thought it proper to limit it to the extent of the wages which were drawn by the workman when he was in service and when his services were terminated and therefore used the words "full wages last drawn". To read these words to mean wages which would have been drawn by the workman if he had continued in service if the order terminating his services had not passed since it has been set aside by the award of the Labour Court or Industrial Tribunal, would result in so enlarging the benefit as to comprehend the relief that has been granted under the award that is under challenge. Since the amount is not refundable or recoverable in the event of the award being set aside it would result in the employer being required to give effect to the award during the pendency of the proceedings challenging the award before the High Court or the Supreme Court without his being able to recover the said amount in the event of the award being set aside. We are unable to construe the provisions contained in Section 17-B to cast such a burden on the employer. In our opinion, therefore, the words "full wages last drawn" must be given their plain and material meaning and they cannot be given the extended meaning as given

by the Karnataka High Court in Visveswaraya Iron & Steel Ltd., (1994 (84) FJR 46) (supra) or the Bombay High Court in Carona Sahu Co. Ltd., (1995 (70) Fac LR 25) (supra)."

7. The Hon'ble Supreme Court, in the case of ***Uttaranchal Forest Development Corpn. and another*** vs. ***K.B.Singh and others***[4], held that only such workmen in whose favour there are awards of reinstatement and who have filed affidavits of their not being in gainful employment, shall be entitled to be granted reinstatement or in lieu thereof wages last drawn by them on respective dates of their terminations from services. Their entitlement for such wages would be from the respective dates by filing affidavits by each of them in compliance with Section 17B of the Act, 1947.

8. The Hon'ble Supreme Court, in another case of ***Dena Bank*** vs. ***Ghanshyam***[5], while relying on ***Dena Bank*** vs. ***Kirtikumar T. Patel*** (supra), held as under :-

"8. Section 17-B provides that where the employer prefers any proceedings against an award directing reinstatement of any workman, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, *full wages last drawn* by him inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in

such Court. The proviso says that if the High Court or the Supreme Court is satisfied that the workman had been employed and had been receiving adequate remuneration during such period or part thereof, the Court shall order that no wages shall be payable under that section for such period or part, as the case may be."

"12. We have mentioned above that the import of Section 17-B admits of no doubt that Parliament intended that the workman should get the last-drawn wages from the date of the award till the challenge to the award is finally decided which is in accord with the Statement of Objects and Reasons of the Industrial Disputes (Amendment) Act, 1982 by which Section 17-B was inserted in the Act. We have also pointed out above that Section 17-B does not preclude the High Courts or this Court from granting better benefits – more just and equitable on the facts of a case than contemplated by that provision to a workman. ....."

9. Section 17B of the Act, 1947 lays emphasis on pendency of proceedings against an award whereunder reinstatement of any workman was ordered. The word "pending" is defined in *Stroud's Judicial Dictionary*, 3rd Edition, Vol. III, p. 2141 as : A legal proceeding is "pending" as soon as commenced and until it is concluded, i.e., so long as the Court having original cognizance of it can make an order on the matters in issue, or to be dealt with, therein.

10. In the case of ***Asgarali Nazarali Singaporewalla*** vs. ***State of Bombay***[6], the meaning of the word "pending" in criminal case has been defined as under :-

> "Pending :– (1) A legal proceeding is "pending" as soon as commenced and until it is concluded, i.e., so long as the Court having original cognizance of it can make an order on the matters in issue, or to be dealt with, therein. Similar are the observations of Jessel, M.R. *In re Clagett's Estate; Fordham* v. *Clagett*, (1882) 20 Ch. D. 637 at p. 653 (J).
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> "What is the meaning of the word "pending"? In my opinion, it includes every insolvency in which any proceedings can by any possibility be taken. That I think is the meaning of the word "pending" .... A cause is said to be pending in a Court of justice when any proceeding can be taken in it. That is the test"."

11. Further, in the case of ***Lt. Col. S.K. Keshyap and another*** vs. ***The State of Rajasthan***[7], the Hon'ble Supreme Court has relied and approved the definition of the word "pending" given in the case of ***Asgarali Nazarali Singaporewalla vs. State of Bombay*** (supra), holding that the word "pending" will ordinarily mean that the matter is not concluded and the Court which has cognizance of it can make an order on the matter in issue. The test is whether any proceedings can be taken in the cause before the Court or Tribunal where it is said to be pending. The answer is that until the case is concluded, it is pending.

12. Thus, it is clear from the meaning of the word "pending", i.e., "during the pendency of the proceedings", as employed in Section 17B of the Act, 1947 that stay of the award would not change the nature and scope of Section 17B of the Act, 1947. The condition is payment of last wages drawn during pendency of any proceedings against an award of reinstatement in a High Court or the Supreme Court. The required condition is, firstly, there should be an award for reinstatement of a workman, secondly, the proceedings should be pending in the High Court or the Supreme Court and thirdly, there should be an affidavit by such workman to that effect in such Court. Where the High Court or the Supreme Court is satisfied that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, payment of no wages can be ordered for such period or part, as the case may be.

13. Thus, the inescapable conclusion from the cases cited (supra) is that denial of benefits, as granted to the workman under Section 17B of the Act, 1947, would defeat the spirit of the enactment. The section in effect has codified the rights of the workmen to get their wages which they could not get in time because of long drawn out process caused by the methods employed by the management. Thus, the section mandates the Court to award wages if the conditions in the section are satisfied. It is ordered accordingly.

14. Before parting with the decision, this Court records appreciation for invaluable assistance rendered by Mr. Rajeev Shrivastava, Advocate, appointed as Amicus Curiae by this Court. The

State is directed to make payment of Rs.7,500/-(Rupees Seven Thousand Five Hundred) to the learned Amicus Curiae Mr. Rajeev Shrivastava for his invaluable assistance to the Court, as fee and expenses, within a period of three weeks.

15. A copy of this order be placed on the record of the connected writ petitions.

Sd/-
Satish K. Agnihotri
Judge

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1 AIR 1986 SC 842
2 1987 LAB.I.C. 1468
3 AIR 1998 SC 511
4 (2005) 11 SCC 449
5 (2001) 5 SCC 169
6 AIR 1957 SC 503
7 (1971) 2 SCC 126

Gopal